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**IN THE
COURT OF APPEALS OF INDIANA**

ANGELIC LECLAIR,

Appellant-Defendant,

VS.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A04-0608-CR-433

APPEAL FROM THE MARION SUPERIOR COURT

The Honorable Evan Goodman, Judge
Cause No. 49F15-0409-FD-161171

June 26, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Anngelic Leclair appeals her conviction for operating a vehicle while intoxicated as a class A misdemeanor.¹ Leclair raises one issue, which we restate as whether the evidence is sufficient to sustain her conviction. We affirm.

The facts most favorable to the conviction follow. In the early morning hours of February 1, 2004, Officer Andrew Badowski of the Indianapolis Police Department was patrolling in downtown Indianapolis. Officer Badowski saw a vehicle driven by Leclair make two lane changes without signaling. At that point, Leclair was driving in a middle lane of Maryland Street. The vehicle then made a right hand turn by crossing two additional travel lanes. Officer Badowski initiated a traffic stop as a result of the traffic violations.

When Officer Badowski asked for Leclair's driver's license, she said that it was in her purse, which was in the hatchback of her car. Officer Badowski allowed Leclair to get out of the vehicle to retrieve her purse, but Leclair had difficulty getting the hatchback open. Officer Badowski smelled an odor of alcohol on her breath and saw that her eyes were glassy. Officer Badowski gave Leclair the horizontal gaze nystagmus field sobriety test, which she failed. Due to the extreme cold, Officer Badowski did not perform other field sobriety tests on Leclair.

As Officer Badowski was transporting Leclair to take a breath test, Leclair got "very anxious" and started breathing heavily. Transcript at 16. Leclair informed the officer that she was having a panic attack. Officer Badowski called an ambulance, and

¹ Ind. Code § 9-30-5-2(b) (2004).

Leclair was treated at the scene. Leclair relaxed and informed the paramedics that she did not want to be transported to the hospital. She did agree to have Officer Badowski transport her to the hospital for a blood test. On the way to the hospital, Officer Badowski noticed that Leclair had rolled down her window and was sticking her head out of the window. Officer Badowski told her not to stick her head out of the window, and Leclair proceeded to roll the window up with her head and neck out of the window. Officer Badowski stopped the vehicle and removed Leclair from the backseat. Leclair then started banging her head on the asphalt, and Officer Badowski called the ambulance back to the scene. The ambulance transported Leclair to the hospital.²

The State charged Leclair with: (1) operating a vehicle while intoxicated as a class A misdemeanor; (2) operating a vehicle with a BAC between 0.08 and 0.15 as a class C misdemeanor;³ (3) operating a vehicle while intoxicated as a class D felony;⁴ and (4) operating a vehicle with a BAC of 0.08 or more as a class D felony.⁵ After a bench trial, the trial court found Leclair guilty of operating a vehicle while intoxicated as a class A

² A blood draw was performed at the hospital, and the State relies upon the results of the blood draw for the proposition that Leclair's BAC was 0.13. Appellee's Brief at 3-4. However, the results of the blood draw were never entered into evidence during the trial. Consequently, we do not consider the results of the blood draw in determining whether the evidence is sufficient to sustain Leclair's conviction.

³ Ind. Code § 9-30-5-1 (2004).

⁴ Ind. Code § 9-30-5-3 (Supp. 2003) (subsequently amended by Pub. L. No. 82-2004, § 1 (eff. July 1, 2004)).

⁵ Id.

misdemeanor and not guilty of the remaining charges. The trial court sentenced Leclair to 365 days in jail with 300 days suspended to probation.

The issue is whether the evidence is sufficient to sustain Leclair's conviction for operating a vehicle while intoxicated as a class A misdemeanor. When reviewing claims of insufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. Jordan v. State, 656 N.E.2d 816, 817 (Ind. 1995), reh'g denied. Rather, we look to the evidence and the reasonable inferences therefrom that support the verdict. Id. We will affirm the conviction if there exists evidence of probative value from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. Id.

The offense of operating a vehicle while intoxicated as a class A misdemeanor is governed by Ind. Code § 9-30-5-2(b), which provides that "a person who operates a vehicle while intoxicated commits . . . a Class A misdemeanor if the person operates a vehicle in a manner that endangers a person." "Intoxicated" means "under the influence of: (1) alcohol; . . . so that there is an impaired condition of thought and action and the loss of normal control of a person's faculties." Ind. Code § 9-13-2-86. "Intoxication may . . . be established through evidence of consumption of significant amounts of alcohol, impaired attention and reflexes, watery or bloodshot eyes, an odor of alcohol on the breath, unsteady balance, failed field sobriety tests and slurred speech." Dunkley v. State, 787 N.E.2d 962, 965 (Ind. Ct. App. 2003) (quoting Mann v. State, 754 N.E.2d 544, 547 (Ind. Ct. App. 2001), trans. denied). "The element of endangerment is proved by evidence that the defendant's condition or manner of operating the vehicle could have

endangered any person, including the public, the police, or the defendant.” Ashba v. State, 816 N.E.2d 862, 866-867 (Ind. Ct. App. 2004).

Leclair argues that the evidence shows that she was having an anxiety attack, not that she was intoxicated. However, Leclair’s argument is merely a request that we reweigh the evidence, which we cannot do. See Jordan, 656 N.E.2d at 817. The State presented evidence that Leclair was driving erratically by failing to use her turn signals during lane changes and making a right hand turn by crossing several lanes of traffic at once. The officer observed that Leclair’s eyes were glassy and that she had an odor of alcohol on her breath. Additionally, Leclair had difficulty opening the hatchback of her vehicle and failed the horizontal gaze nystagmus field sobriety test. The alleged anxiety attack did not begin until these events had already occurred and Leclair was placed in the officer’s vehicle. We conclude that the State presented evidence of probative value from which a reasonable trier of fact could find Leclair guilty beyond a reasonable doubt of operating a vehicle while intoxicated as a class A misdemeanor. See, e.g., Ashba, 816 N.E.2d at 867 (holding that the evidence was sufficient to sustain the defendant’s conviction for operating a vehicle while intoxicated as a class A misdemeanor).

For the foregoing reasons, we affirm Leclair’s conviction for operating a vehicle while intoxicated as a class A misdemeanor.

Affirmed.

MAY, J. and BAILEY, J. concur